

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 103 - SB 230

March 18, 2013

SUMMARY OF BILL: Requires local governments, prior to obtaining property through eminent domain, to send notification, by certified mail or by hand, to the property owner including a form listing the following options: the property owner may accept the local government's offer as damages; the property owner may reject the amount offered by the local government and provide a counter offer; the property owner may reject the amount offered by the local government and proceed to current statutory court proceedings; or the property owner may reject the amount offered by the local government and proceed to an arbitration process as prescribed by the bill; also included with this initial notification shall be a statement of value indicating the local government offer for damages to the property owner, an arbitration initiation form, information regarding the consequences for not returning the enclosed form within 30 days.

Requires the property owner to respond to the local government within 30 days indicating which of the options were chosen, or the property owner waives the right to provide a counter offer or proceed to arbitration. If the property owner returns the notification to the local government within 30 days with a counter offer, the local government will have 30 days to respond with one of the following options: accept the counter offer provided by the property owner, reject the counter offer, or reject the counter offer and provide a new counter offer. If the local government fails to respond to the property owner within 30 days, the local government shall be deemed to have accepted the counter offer provided by the property owner. If the local government rejects the counter offer provided by the property owner, then the response sent to the property owner shall include an additional arbitration initiation form.

Requires the local government to provide notice to the American Arbitration Association (AAA) within 15 days of receiving notice from the property owner indicating the election to proceed to arbitration. Requires the property owner to submit an appraisal of the property to the assigned arbitrator; and arbitration is required to commence within 60 days after the appointment of an arbitrator. Requires all costs associated with arbitration to be split equally between the involved parties, and each party shall be responsible for the party's own discretionary costs.

Requires the local government to offer the property obtained by eminent domain to the original property owner for the original purchase price, prior to transferring the property to any person; prohibits the local government from transferring the property before receiving written confirmation from the original property owner or the expiration of 90 days.

ESTIMATED FISCAL IMPACT:

Decrease Local Revenue – Exceeds \$10,000

Increase Local Expenditures – Exceeds \$323,600/Permissive

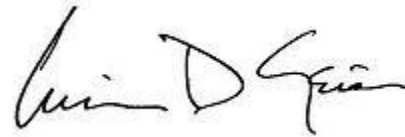
Assumptions:

- The provisions of the bill regarding assessment of valuation of property to be taken by eminent domain will result in a mandatory cost assessed on the permissive action of eminent domain and will be applicable to every occasion in which a local government entity seeks to acquire land through eminent domain. However, decreases in local government revenue associated with offering property previously taken by eminent domain at the original purchase price will result in a mandatory fiscal impact to local government.
- There average number of eminent domain takings each year is estimated to be three per county, or 285 (95 counties x 3 condemnations) total acquisitions per year.
- Each local government will notify property owners by certified mail (not by hand) of their intent to file petitions to initiate condemnation proceedings.
- Pursuant to Tenn. Code Ann. § 29-17-104, the notice of filing of petition to institute condemnation proceedings shall be given at least 30 days prior to the taking of any additional steps in the case.
- The provisions of this bill will require local governments to send new notification in conjunction with this currently required notification.
- Based on information on the United States Postal Service website, sending certified mail requires an additional \$3.10 per mailing.
- The additional notification and certified mail requirements will result in a recurring increase in local government expenditures of \$1,012 [(\$0.46 postage + \$3.10 additional for certified mail) x 285 condemnations]
- Land purchase prices will vary based on the total acreage to be purchased and the location of the land. Based on responses to the 2012 Local Government Survey conducted by Fiscal Review Committee staff, participating municipal officials indicated the average payment for land acquired through eminent domain was \$136,923.
- The provisions of the bill provide that the American Arbitration Association (AAA) will be utilized for arbitration purposes and all arbitration fees will be shared by local governments and property owners.
- According to the AAA fee schedule, fees are assessed based on the amount of the claim filed. There is an initial filing fee for each claim and counterclaim filed, as well as the final fee assessed.
- Based on the commercial arbitration fee scheduled provided on the AAA website, the initial filing fee for claims less than \$10,000 is \$775 with a final fee assessed at \$200. Claims greater than \$10,000 and less than \$75,000 have an initial filing fee of \$975 with a final fee of \$300. Claims between \$75,000 and \$150,000 have an initial filing fee of \$1,850 and a final fee of \$750. Claims between \$1,000,000 and \$5,000,000 have an initial filing fee of \$8,200 and a final fee of \$3,250.

- These fees do not include prices for rental of hearing rooms, compensation of the arbitrator, and any additional administrative fees to be assessed by the AAA.
- It is reasonably estimated that arbitration fees assessed to each claim filed will exceed \$1,617 $\{[(\$775 \text{ initial filing fee} + \$200 \text{ final fee}) + (\$975 \text{ initial filing fee} + \$300 \text{ final fee}) + (\$1,850 \text{ initial filing fee} + \$750 \text{ final fee})] / 3\}$. It is estimated each party filing an initial claim will have a similar counterclaim filed by the opposing party. Fees assessed for claims and counterclaims will result in total arbitration fees exceeding \$3,234 $(\$1,617 \times 2 \text{ claims})$ per arbitration.
- It is estimated that 70 percent of property owners will elect to utilize arbitration; with each party filing its own claim or counterclaim to the claim provided by the opposing party.
- The total increase in local government expenditures is reasonably estimated to exceed \$323,604 per year statewide $[(\$3,234 \text{ per occasion} \times 285 \text{ total occasions} \times 70\% \text{ arbitrated} \times 50\% \text{ of costs paid by local government}) + \$1,012 \text{ mailing costs}]$.
- The revenue impact of this bill on local government is dependent upon multiple unknown factors, including but not limited to, the number of instances that local governments will be required to sell property acquired by eminent domain back to the original owner, the original price paid for the acquired property at the time of taking, and the current fair market value of the acquired property. Given the extent of unknown factors, determining a precise revenue impact to local government is difficult. However, the recurring decrease in local government revenue is reasonably estimated to exceed \$10,000 per year statewide.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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